

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING	)	
PHARMACY, INC., PRODUCTS LIABILITY	)	
LITIGATION	)	
	)	MDL No.: 2419
	)	Master Docket No.: 1:13-md-2419-FDS
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THIS DOCUMENT RELATES TO:	)	
	)	
All Actions Against Specialty Surgery Center	)	
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**MOTION TO MODIFY CASE MANAGEMENT DEADLINES IN  
SPECIAL SURGERY CENTER CASES**

The Plaintiffs’ Steering Committee (“PSC”) moves the court to extend the case management deadlines in all actions involving the SSC Defendants and Calisher. The PSC requests this relief to provide additional time to complete common issue fact discovery and, once that discovery is complete, to prepare its respective experts on common issues before proceeding to case-specific discovery.

The PSC has met and conferred with counsel for Defendants Specialty Surgery Center, PLLC, Kenneth Lister, MD, PC, Kenneth R. Lister, MD (“SSC Defendants”), and putative defendant Calisher & Associates, Inc. (“Calisher”) who have indicated that they do not oppose adjusting the schedule along similar lines proposed herein. However, the SSC Defendants have indicated they want any additional common issue fact discovery to be limited in scope. The PSC does not believe any such limitation is appropriate or warranted at this point.

The PSC and the SSC Defendants are at an impasse as to whether and to what extent the PSC is entitled to additional fact discovery on certain common issues, including whether the PSC is entitled to re-depose defendant Kenneth Lister and Jean Atkinson on certain topics. The PSC also disputes the sufficiency of SSC’s November 20, 2015 responses to discovery served on

October 13, 2015. On December 11, 2015, the PSC moved to compel discovery relating to some of these issues, which will require additional time for the Court to resolve and could entail further discovery, depending on the Court's rulings (Dkt. No. 2494).

Furthermore, on November 3, 2015, the PSC filed a Motion to Amend Complaints to Add Calisher & Associates as Defendant in Cases Related to Claims Against Special Surgery Center (Docket No. 2380), which Calisher has not opposed. Upon its addition to the case, Calisher anticipates that it will seek to conduct additional common fact discovery and to file a dispositive motion. Therefore, in the interest of fairness, additional time is warranted to permit Calisher to conduct common issue discovery (including re-depositions of Dr. Kenneth Lister and Jean Atkinson) and to file and receive a decision concerning a dispositive motion under Rule 12(b), should Calisher choose to file that motion.

None of the cases involving the SSC Defendants or Calisher are among the pool of potential bellwether cases. Therefore, extending the case management deadlines for these cases will not impact the existing bellwether discovery or trial schedule.

The PSC therefore requests that the court enter the attached proposed Order, which would reset the case management deadlines as follows:

- Close of Common Fact Discovery: 30 days after the Court's rulings on the PSC forthcoming Motion(s) to Compel or Calisher's Rule 12(b) dispositive motion, whichever is later.
- Opening Common Expert Reports: 30 days from the close of common fact discovery.
- Rebuttal Common Expert Reports: 30 days from the disclosure of opening common expert reports.
- Reply Common Expert Reports: 15 days from the disclosure of rebuttal common expert reports.

- Common Expert Deposition Deadline: 15 days from the disclosure of reply common expert reports.
- All other pretrial deadlines: to be determined.

Date: December 15, 2015

Respectfully submitted:

The Plaintiffs' Steering Committee,

By its attorneys,

/s/ Benjamin A. Gastel

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**CERTIFICATE OF SERVICE**

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing *Motion to Modify Case Management Deadlines in Specialty Surgery Center Cases* to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: December 15, 2015

/s/ Benjamin A. Gastel  
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